

THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

W.P.No.983 of 1995

Dt. 27-02-2006

Between:

1. Somavarapu Vijayarami Reddy and others.

..Petitioners.

and

1. Superintending Engineer, Irrigation Circle,
Nellore and others.

..Respondents.

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W.P.No.983 of 1995

Oral Order:

Petitioners who are Ayacutdars of Penubarthi Tank invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution to declare the order of the 1st respondent in Memo No.69 NC dated 20-01-1995 (filed in W.P.M.P.No.2781 of 1995) and the order passed by the Collector and District Magistrate, Nellore in proceedings D.Dis. (D5) 886/95, dated 27-01-1995 directing to repair the 4 vents on surplus weirs No.1 and 2 of Penubarthi tank as illegal, arbitrary, discriminatory, unjust and violative of principles of natural justice and set aside the same and direct the respondents to maintain the specifications of Penubarthi tank as maintained in

the register of component works including the Full Tank Level (FTL) and level of surplus weir Nos.1 and 2 as recorded therein.

Facts, which are no in dispute, are as under:

The registered ayacut of Penubarthi tank is about 1450 acres and tank bed area is 918 acres. Encroachments have taken place inside the tank bed since a decade step by step and encroachers used to cultivate the lands when the water level is reduced and the said encroachers used to cut open the tank bund creating breach to the tank bund several times when heavy down pour like heavy cyclonic rains hit the area. The irrigation department reported the matter to the M.R.O. and police department to take suitable action against the encroachers to ensure proper water supply to the registered ayacutdars. It is also not in dispute that the Full Tank Level (FTL) is (plus) 22.150' and there are two surplus weirs meant for disposal of flood water. In the counter it is admitted that the length of surplus weir No.1 is 86'.3" and length of surplus weir No.2 is 60'.3". Any excess water over and above FTL will automatically flow out through the surplus weirs Nos.1 and 2. All the ayacutdars will depend on paddy crop for their live-li-hood and there are no filter points in the area and at the present depth of water in the tank is 4 to 5 feet on average due to deposition of silt inside the tank bed from over a period of several decades, and due to cultivation undertaken in the tank bed area resulting in such deposition and revenue department allotted pattas to the encroachers without consent of the irrigation authorities. Ayacutdars also failed to protect the ayacut area and resist such encroachment and granting of pattas to the encroachers. Suddenly the encroachment has taken place about 600 acres. The ayacutdars are realizing their difficulties and started resisting the same and there is some dispute between the ayacutdars and foreshore cultivators, who are cultivating in the tank bed area. On the compliant made by the ayacutdars the officials of the irrigation department went to the tank with police escort to reduce the conflict between the ayacutdars and foreshore cultivators and further to resolve the controversy. The water level of the tank is 40 cms. below to Full Tank Level and there is tense situation between the ayacutdars and foreshore cultivators. The encroachers encroached the 1st respondent with their leaders requesting the latter to restore the vents of surplus weirs, which are repaired and closed completely by the irrigation department. After prolonged discussions with the ayacutdars and foreshore cultivators it is decided

that if the same level is maintained, it would serve the needs of registered ayacutdars, as there is feeder channel from Somasila Reservoir. Accordingly, the 1st respondent ordered to restore the closed vents in his memo dated 20-01-1995 not with an intention to make the encroachers enable to cultivate their illegal lands but demolishing of closed vents of surplus weirs will lead to beyond the depth of 40 Cm from FTL and reduce the required water storing capacity of the tank which will affect the existing crops of the registered ayacutdars. Accordingly petitioners have given a notice to the respondents. It is admitted that revenue department and irrigation department combinedly having responsibility to take appropriate action for lowering or increasing the water levels whenever needed to save the standing crops and the memo issued by the 1st respondent will not affect the rights of the petitioners as noticed during the course of joint inspection made by the District Collector and the Superintending Engineer, Irrigation Circle, Nellore nor the said memo was issued to encourage the encroachers. They also admitted that they are not taking any steps to disturb the existing system of surplus weirs No.1 and 2 of Penubarthi tank but they have conducted a joint inspection to normalize the prevailing tension among the ayacutdars and encroachers. In view of the interim orders passed by this Court in W.P.M.P.No.1173 of 1995 the orders issued by the 1st respondent are kept in abeyance until further orders.

Heard the learned counsel for the petitioners, learned Government Pleader for Irrigation and learned counsel appearing for the respondents who are impleaded.

A Division Bench of this Court in W.A.No.1246 of 1989 in an identical situation held it is the duty of the Government to maintain irrigation sources and it is equally for the Government to decide whether an irrigation source has become unnecessary either partly or wholly. These decisions have to be taken on a consideration of all relevant facts including the interest of the ayacutdars. It is again for the Government to decide whether to assign a portion of tank bed land to landless persons if it decides that a tank need not be maintained to its full level. There must first be a decision either by the Government or any other appropriate authority of the Government before the Court can look into the matter. Without such a decision, the Court would not ordinarily issue a mandamus to the Government in general terms to perform its duty,

that too without hearing all the affected parties and also held that mandamus issued by the learned single Judge is not warranted and directed the Irrigation and Revenue Departments to look into the matter, hear the affected parties and take appropriate decision, consistent with law and public interest.

By passage of time it is now imperative on the part of the Courts and Government to see that the tanks now restored cannot be allowed to misuse nor can be allotted to any one as sought. Tank bed land cannot be allowed to encroach or to ruin the tank resources, since it is community source needs protection to maintain delicate ecological balance and apart from making available natural resources for the public at large.

The Supreme Court in ***HINCH LAL TIWARI v. KAMALA DEVI*** held that to maintain delicate ecological balance tanks need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the revenue authorities having notice that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.

Having regard to fact that the irrigation department admitted registered ayacut under Penubarthi tank is 1450 acres, it is imperative to reserve the said tank to cater the needs of the agriculturists to irrigate the said ayacut area. In the light of the joint inspection conducted earlier the revenue officials are under obligation to protect the ayacutdars who are affecting by granting pattas in the tank bed area and shall take an endeavour to preserve the tank for the public benefit and to sub-serve the object for which the tank was formed. Unless the ayacutdars are provided alternative source of irrigation facilities through any canal from the project constructed within in the vicinity they are under obligation to restore the tank and see that the tank will cater the needs of the public.

In view of the same, respondents are hereby directed to convene joint inspection after due notice to the ayacutdars and the persons who are granted pattas in the tank bed area and pass appropriate orders.

The writ petition is accordingly disposed of. No costs.

_____ A.GOPAL REDDY, J.

27-02-2006

Murthy